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LEGAL TENDER NOTES IN CALIFORNIA.

THE creation of the United States legal tender notes and their subsequent depreciation brought into circulation in California, as well as in other parts of the country, two kinds of lawful money of different values. Under the conditions of free exchange presupposed in the statement of Gresham's Law, these notes would have supplanted gold and silver; but this was not the result, and it is the purpose of this article to indicate some of the more important steps taken by the people of California in avoiding their use and in holding to a metallic currency.

Prior to the issue of the legal tender notes no paper money had circulated in California. The constitution of the State expressly prohibited the creation and circulation of any instruments of credit as money. This prohibition was contained in Sections 34 and 35 of Article IV., which were as follows: —

> The legislature shall have no power to pass any act granting any charter for banking purposes, but associations may be formed, under

general laws, for the deposit of gold and silver; but no such association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money.

The legislature of this State shall prohibit by law any person or persons, association, company, or corporation from exercising the privileges of banking or creating paper to circulate as money.

Directed by this law, and influenced by the fact that California had become conspicuous for its extensive production of the precious metals, the people acquired habits and traditions which made them prefer gold and silver to any other form of money. Moreover, for a number of years Californians had enjoyed remarkable prosperity; and they were accustomed to find one of the causes of this prosperity in their possession of a stable medium of exchange. When, therefore, in 1862, the United States issued these notes and made them legal tender wherever the federal authority extended, the people of California found themselves called upon to make an experiment quite off the line of their experience. The States in the central and eastern parts of the country had been long familiar with paper currency, and some of it was of even a more questionable character than the new United States notes. To the people of these States the new notes came as a money of general circulation, supplanting the bills of the old State banks, which circulated within somewhat narrow limits. But to the Californians, who had used only gold and silver, the legal tender notes appeared as an unstable medium, the causes of whose fluctuations they were not able to understand, but which, they clearly saw, threatened to subvert the hitherto stable basis of their commercial transactions.

In the beginning of the discussion of the question raised by the appearance of the legal tender notes in California there were serious doubts as to the constitutionality of the law under which they had been issued; and for

this reason many of the arguments bore directly on this point. There were, undoubtedly, numerous good and valid reasons which the Californians might have urged specifically against the use of legal tender notes in their circumstances. But not all of these reasons found clear and definite statement in the public discussion. If a satisfactory conclusion was reached, it was not through any superior economic insight: it was because the question to be determined was a simple practical problem of business, in which the interests of the dominant part of the community pointed the way to the solution. One of the earliest objections to the use of the legal tender notes which found specific statement was based on the fact that their fluctuations in value depended upon circumstances not within the sphere of the Californian's observation. The variations in their value were indicated by the changes in the price of gold in New York, which could be known in California only by means of the telegraph; and telegraphic news was liable to be subject to monopoly control. With an unstable medium of exchange, with little or no knowledge of the particular causes of its variations in value, and with no way to determine this value except by despatches from New York, the members of the mercantile community had a very unpropitious outlook for their operations. The farmers were also interested in maintaining a metallic currency. Obliged to sell their surplus of grain in England, it was considered to be important for them to have a favorable state of exchange between California and that country. "The farmer," it was said, "under otherwise advantageous circumstances might be disappointed for months in the sale of his grain for exportation on account of the rate of exchange on England." * Under the metallic currency, this rate had been almost uniform for ten years; and the farmers and dealers in grain had had a fairly reliable basis for their calculations.

* *Report of the President of the Chamber of Commerce*, May 10, 1864, p. 17.

Creditors, moreover, saw their interests menaced by the rapid depreciation of one of the kinds of lawful money; and that their fears were not groundless may be seen from the fact that in some instances debtors undertook subsequently to liquidate their obligations by using depreciated notes.* One of the local financiers found an objection to adopting Treasury notes to the exclusion of gold in the expense of sending to the eastern part of the country to purchase them. He held that it would require a long time for the government to send a sufficient supply to serve the needs of currency, and that the people of California ought not to be subject to the expense of shipping gold to New York and bringing back United States notes, since "there would be a loss of from forty to fifty days' interest, together with freight and insurance both ways, amounting to an extraordinary tax on business."† Prophets were not wanting in those days. Nearly every man in the community had a list of evils which would ensue as a consequence of action regarding the legal tender notes: in some cases, the evils would surely follow the

*A sufferer by one of these transactions sets forth his grievance in the *Evening Bulletin*, March 5, 1863, as follows: "About four years ago I loaned $10,000 in gold coin of the United States to John Smith, of Sacramento City, for which said Smith executed to me a note, in the usual form, bearing interest at the rate of one and one-half per cent. per month. This note I placed in the hands of my bankers, D. O. Mills & Co., Sacramento, with instructions to receive and receipt for the interest as it accrued thereon, and also to collect the principal at maturity. In January last Mr. Smith called at the banking house of D. O. Mills & Co., and tendered $10,000 in greenbacks in payment in full of the note executed to me, and knowing that the said notes were not at the time worth more than sixty-eight cents on the dollar. Messrs. Mills and Miller, of the house of Mills & Co., refused to receive the tendered greenbacks without consultation with me, and, moreover, denounced the conduct of Mr. Smith as unfair in the extreme, at the same time reminding him of the fact that he had received the whole amount in gold coin. After a conference more protracted than pleasant, Mr. Smith offered to pay $10,000 in greenbacks and $1,000 in gold coin, which proposition, rather than be a party to a tedious and expensive lawsuit, I assented to. . . . As it is, I am loser to the amount of $2,200, allowing sixty-eight cents on the dollar for greenbacks; and at the rate they are now selling — and I still have them on hand — my loss is about $3,500."

†San Francisco *Evening Bulletin*, March 7, 1863.

acceptance of the notes as the money of the State; in other instances, the disasters were set down to appear only in case the notes were not accepted. Mr. H. H. Haight, later Governor of California, pointed out some of these evils in arguing the case of James Lick *v.* William Faulkner. Action had been brought to recover $450 rent. The defence admitted the debt, but averred a tender of Treasury notes issued under the act of February 25, 1862. Mr. Haight, speaking in behalf of James Lick, took ground against the constitutionality of the Legal Tender Act, and at the same time indicated some of the evils that would result from the introduction of the kind of money contemplated in the act in question. "We all know," he said, "that this legal tender provision, if declared valid, would upheave the very foundations of all business prosperity in California, would substitute distrust for confidence, and encounter the traditional and bitter hostility of the whole population, without any compensating advantage to the federal government. We know that it would do more than all other causes combined to impair the loyalty of our people to the Union and to endanger our domestic tranquillity." *

But the discussion was not entirely one-sided. There were advocates of the use of the Treasury notes, yet they did not make clear the motives which determined their advocacy. They said much of the demands of patriotism and loyalty to the Union, and affirmed that a refusal by the people of the Commonwealth to use the currency which the federal government had issued in its need was about equivalent to secession. They had no better appellation than "secessionists," "abettors of treason," and "traitors" for the merchants of San Francisco who manifested dissatisfaction with the Treasury notes as the currency of the State. It is possible that there was some

* *The Currency Question:* Argument before the Supreme Court of the State of California, p. 99.

connection between the desire of certain persons to have the Treasury notes generally accepted in California and their desire for a new field of speculation. And in their zeal the advocates of the notes frequently ventured to prophesy. A correspondent writing to the *Evening Bulletin*, July 23, 1862, said: —

> They are certainly to become the currency of this State; and, the sooner Californians accept them as such, the better it will be for themselves and the more favorable for the general government. California can do no greater service to the Union, nor show her loyalty in a manner so fitting, as by at once accepting the legal tender notes and making them the basis of her circulating medium. It is folly to persist in the idea that gold shall here be the basis and paper the merchandise.

This writer further asserted that the adoption of the legal tender notes would be a great benefit to the business of California. In the State Treasurer's report, in January, 1863, it was argued that it was not only folly, but *pro tanto* rebellion, for the people of the State to attempt to ostracize the national currency. "We must either adapt ourselves and trade to the currency of our common country, become a homogeneous part of the nation, bearing our share of its burdens and enjoying equally with others the fruition of its maintenance, or adopt the alternative of separation and rebellion."

Those, however, who had important part in the commercial and industrial affairs of the State stood firmly in favor of maintaining a currency of gold and silver. Yet in some instances the notes passed from hand to hand, and were received at par. The California Steam Navigation Company, for example, received the legal tender notes for passage between Sacramento and San Francisco, the price of passage having been fixed at five dollars. But in the course of time it was discovered that brokers were taking advantage of the difference in value between gold and the notes; and, therefore, on the 21st of January, 1863, the company determined that only gold and silver should be received.*

* San Francisco *Daily Herald*, January 22, 1863.

As the notes declined in value, the embarrassment of mercantile firms increased. It became evident, moreover, that their value was not determined, or to any considerable extent modified, by the attitude which the population of California took concerning them. With this discovery the members of the commercial community became somewhat alarmed, and, foreseeing the evils that would result from a loss of the gold standard of prices, began to seek a remedy, and to inquire how they might hold to the metallic currency. This problem had already presented itself before the end of 1862. On the 17th of September of that year the following letter, signed by a business firm of San Francisco, was printed in the *Alta California*: —

> The Legal Tender Note question with us in California is one of great importance, and should be disposed of at once by some united action of the business community. As the matter now stands, the laboring class and the producers are the ones who suffer most,— they who are the least able to bear the burden,— while the capitalist and the broker are greatly benefited.
>
> The loss is particularly heavy upon those who had government contracts,— did the work low, sold the goods at the market price, with the expectation of getting gold in payment. This we think very unjust and unfair.
>
> We have been compelled to receive many thousands of dollars in these notes, and, at the price we charged for our goods and labor, cannot afford to lose the discount now demanded. Our employees say they cannot receive them at par, for the reason they cannot use them at their boarding-houses, butchers', and grocers'. We paid off with them on Saturday, and on Monday twenty-five out of fifty men refused to go to work unless we would promise to pay in gold coin. Now, we say something should be done to regulate this matter; and we hope the merchants and business men will call a meeting at an early day, and take such action as their wisdom and patriotism may suggest. For ourselves, we wish to maintain the government, but would like the burden to fall equally upon all classes.*

* One of the episodes of the period marked by the depreciation of the legal tender notes was the speculation of State Treasurer Ashley. The plan of this transaction was to collect the federal direct tax in coin, and pay it into the United States Treasury in legal tender notes, thus saving to the State Treasury the difference. This transaction, although the State Treasury saved by it the sum of $24,260, was almost universally condemned.

The need of a remedy, either that here suggested or some other, was also emphasized by a writer in the *Herald* of October 22, 1862: —

> All purchase of flour, wheat, barley, and other grain [he says], as well as every description of country produce, is paid for in gold and silver coin. It is, therefore, unwise and impolitic for country merchants to expect that city dealers, jobbers, and others will or can afford to receive paper money in exchange for goods. If we pay out gold for produce, we ought certainly to receive like money in return. We allude to this subject again for the reason that efforts are being strenuously made in certain quarters to force legal tender notes off for debts long past due, which course, if persisted in, will inevitably result in restricting and limiting credits to interior buyers to what may be called substantially a cash basis. Already we know that the sifting process is going on, and even at this moment parties that a few months ago had the usual credit extended to them, now find that terms of a sale are invariably "cash before delivery."

In the same journal, on the following day, it was said that the city jobbers should come to some general understanding among themselves in regard to a uniform course of action respecting legal tender notes.

> As it is, commission men and importers have been and are still doing everything to secure themselves against loss by inserting a gold clause in every note of hand they receive, and in every contract sale they make, as well as in every bill of goods that is rendered, besides having a general verbal promise and assurance that the terms of sale are, in any event, payable in gold coin or its equivalent. Not so with the country dealers and interior creditors, as many of their goods are sent forward on orders without personal application or notes given for the goods so purchased. Consequently, jobbers are, to a certain extent, left in the gap. Selling goods as they do at a small profit, not averaging, probably, over five per cent. advance, they cannot afford to take paper money in payment at the ruinous discount at which it is ruling; and, unless some uniformity is agreed upon, all credits must be cut off, and trade come down to a cash basis.*

In accordance with these suggestions as to action in union, it was proposed to form an agreement among the

* *Daily Herald*, October 23, 1862.

merchants of San Francisco in favor of holding to a metallic currency. In this agreement, which was effected on the 8th of November, 1862, it was decided "not to receive or pay out legal tender notes at any but the market value, gold being adhered to as the standard." The plan was to have this agreement signed by all the leading firms of the city; then to have it signed also by all other firms, both those in the city and those in the country who had dealings with the city. It was thought that this agreement would establish a definite rule of action and create a coercive agency. If any one refused to enter the association, or, having agreed to pay for goods in gold, paid for them in greenbacks at par instead, then his name should be entered in a black book, and the firms all over the State should be notified, so that in all his subsequent dealings he would be obliged to pay for his goods in gold at the time of the purchase.* From the nature of the case, this form of a remedy for the evils of a depreciated currency was necessarily ineffective.

As early as July, 1862, questions raised by the circulation of the depreciated notes received the attention of the courts. In this month a case was brought before the Supreme Court of California "to compel the defendant, as tax collector of the city and county of San Francisco, to accept from the relator $270.45 in United States notes, tendered in payment of State and county taxes assessed upon his property for the present year, and to execute and deliver to him a good and sufficient receipt for the taxes." The tax collector had responded that he did refuse to receive the legal tender notes, and would continue to refuse them on the ground that this was his duty under the statute which provided that he should receive only "legal coin of the United States, or foreign coin at the value fixed for such coin by the laws of the United States."

* *Evening Bulletin*, November 10, 1862.

But the appellant claimed that, if there was anything in the revenue laws of this State conflicting with the legal tender law of Congress, then the former was subordinate to the latter; and that, in so far as they were in conflict, the State laws were repealed; moreover, that the law of Congress, in making the notes "lawful money and a legal tender in payment of all debts, public and private, within the United States," clearly intended to embrace taxes under the term "debts."

The court, however, in its opinion delivered by Chief Justice Field, held that, when the federal law which created the United States notes refers to obligations other than those to the United States,—

it only uses the term "debts"; the notes, it declares, shall be "a legal tender in payment of all *debts*, public and private." Taxes are not debts within the meaning of this provision. A debt is a sum of money due by contract, express or implied. A tax is a charge upon persons or property to raise money for public purposes. It is not founded upon contract; it does not establish the relation of debtor and creditor between the tax-payer and the State; it does not draw interest; it is not the subject of attachment; and it is not liable to set off. It owes its existence to the action of the legislative power, and does not depend for its validity or enforcement upon the individual assent of the tax-payer. It operates *in invitum*. If authority for the distinction is required, it will be found in the cases of The City of Boston *v.* Allen, 2 Dutch. 398; Pierce *v.* The City of Boston, 3 Met. 520; and Shaw *v.* Pickett, 26 Vt. 482.

The term "debt," it is true, is popularly used in a far more comprehensive sense, as embracing not merely money due by contract, but whatever one is bound to render to another, whether from contract or the requirements of the law. But the legal technical meaning of the term, as used in statutes, and in the Constitution both of the United States and of this State, is as we have defined it. . . . But whatever view may be taken of taxes under our statute — whether in the provisions for their enforcement they can be treated as debts due the State — the question still recurs, What did Congress intend by the act under consideration? And upon this question we are clear that it only intended by the terms "debts, public and private," such obligations for the payment of money as are found upon contract.*

* Perry *v.* Washburn, 20 Cal. 318–352.

The judgment in favor of the defendant was therefore affirmed, prohibiting the use of the legal tender notes in the payment of State and county taxes.*

However this opinion may be viewed as matter of law, it is clear that its effect was not limited to restricting to gold and silver the money receivable for taxes. It had, besides, an important moral effect in encouraging the people of the State to take such action as would prevent the notes from becoming generally current. After the Supreme Court of the State had rendered this decision, the objectors to the legal tender notes found in this action a strong support of their conduct. In view of this decision, individual objectors to the notes could not well be accused of treason and secession. Those who had had great assurance that California would be obliged to accept them were silenced on at least one point.

But with this the debate was by no means ended. It was argued that it would be an advantage to the general government and also an advantage to the State at large, whatever might be its effects on the merchants of San Francisco, for the legislature to pass a law authorizing legal tender notes to be taken for taxes. This appeared to be the only means possible to overcome the effect of the decision of the Supreme Court against the use of the notes

* This doctrine was embodied in Section 3888 of the Political Code of California, which was as follows: "Taxes must be paid in legal coin of the United States. A tax levied for a special purpose may be paid in such funds as may be directed." By "an act in relation to the currency of the United States," approved March 12, 1880, Section 3888 was amended as follows: —

"Section 1. All legal tender notes heretofore issued, or which may hereafter be issued by the government of the United States of America, as legal tender notes, shall be received at par in payment for all taxes due or to become due to this State, or to any county or municipal corporation thereof, and such notes shall be a legal tender for all debts, dues, and demands between citizens of this State.

"Sect. 2. All acts, and the provisions of any act or parts of acts, conflicting with this act, are hereby repealed.

"Sect. 3. This act shall take effect and be in force from and after its passage."

for this purpose. Accordingly, a bill was introduced into the Assembly providing, among other things, that the legal tender notes should be received at par for all State and county taxes, dues, fines, or assessments of this State; but it failed to receive serious consideration. The mercantile community of San Francisco dominated the State, and its interests were clearly in favor of the metallic currency. Its energies were therefore directed to preventing, not to furthering, the use of the notes. In view of their depreciation, it began to be questioned whether even promissory notes which stipulated on their face for payment in gold coin of the United States could be practically enforced at law. To set aside this doubt, it was proposed, through one of the newspapers of San Francisco, to adopt some convenient form of note or contract which should be enforcible in the equivalent of specie for its amount. The following form was suggested: —

San Francisco, July —, 1862.

Six months after date, for value received, we promise to deliver to Brown, Jones & Robinson, or order, as much gold bullion as will make, when coined, fifteen hundred and sixty dollars of the gold coin of the United States, of the present weight and standard of fineness, with interest on the value of the same at the rate of — per cent.

John Smith & Co.

It was held that "a judgment rendered on such a contract note would not be for $1,560, which the sheriff might be compelled to receive in Treasury notes of the same par value; but it would be for the value of as much gold bullion as would make on being coined that amount of United States coin. If depreciated paper were the currency, the market value would be accordingly enhanced." *

The question as to whether paper or metallic money should be used appeared in a new form in relation to the

* *Evening Bulletin*, July 2, 1862.

payment of interest on municipal bonds. In the course of a discussion on the subject of paying the interest on San Francisco bonds in New York, it was said that it was for the advantage of the city, in one respect, to pay the interest in paper, as it would depreciate the bonds in the market and enable the city to buy up a larger amount of them with the sinking fund. On the other hand, while the city had an undoubted legal right to pay in greenbacks, such an action was regarded as beneath the dignity of the city and a real violation of the faith pledged with the holders of the bonds abroad. This view was taken by all the members of the Board of Supervisors, and it was determined by that body, in October, 1862, to pay interest in New York on city and county bonds in gold; and the following resolution was passed without a dissenting vote: —

Resolved, That the City and County Treasurer be and he is hereby instructed to pay all interest now due, or that may hereafter become due, on city or city and county bonds, in gold coin, and that the agent of this city and county in New York be instructed to advertise to that effect.*

The exceptional condition of affairs in the Pacific States, and the earnest determination of the merchants of San Francisco to hold to gold and silver as the medium of exchange, made it evident very early that special legislation concerning the currency must be had. The creditors were at the mercy of the debtors. The federal employees found themselves at a serious disadvantage in receiving their wages and salaries in depreciated money, while the items of their expenses were counted in gold. There was danger of a wasteful interruption of business through the presence of conditions which made sales on credit attended with extraordinary risk. These immediate evils were seen, while the possible remote advantages of

* Sacramento *Daily Union*, October 30, 1862.

having a currency like that of the other States of the North were almost entirely overlooked. To avoid these evils, an early attempt was made to induce the federal government to except California from the operation of the legal tender law. Accordingly, on the 12th of February, 1863, Mr. Swift introduced into the Assembly the following resolutions, which were made the special order for a subsequent meeting: —

Whereas the ever loyal people of this State, upon forming their State government and being admitted into the Federal Union, found the then territory of California to be a gold-bearing country, and in view of that fact adopted in their constitution and in their policy and system of laws a metallic currency as a sole and only circulating medium, and ever since that time have pursued such a system to the exclusion of all banks of issue and against a paper currency; and

Whereas, in consequence of said fact and of other circumstances peculiar to this State, the law of Congress making United States Treasury notes a legal tender in payment of debts works a hardship and public inconvenience to the citizens of California far beyond that of any other State or people, and is not followed by an adequate benefit or advantage to the government of the United States,— therefore be it

Resolved, By the Assembly, the Senate concurring, that our Senators in Congress be instructed, and our Representatives requested, to urge these facts upon Congress, and to show to the general government that said law operates to derange the finances of California; to create insecurity, alarm, and uneasiness; to assist unprincipled persons to defraud their creditors out of a portion of their just debts and dues, impair the resources of the State, and materially weaken her power to aid our common country in this the dark hour of her troubles, without benefiting the good cause to any appreciable extent. And be it further

Resolved, That our Senators and Representatives in Congress be instructed and requested to use all legal and honorable means to obtain the passage of an act of Congress, excepting the State of California from the operation of said law.

Resolved, That the Governor be requested to transmit copies of these resolutions to our Senators and Representatives in Congress.

The discussion of these resolutions suggests that there were probably other things of which the legislator of those

days had a more familiar knowledge than of problems in finance. In his remarks following the introduction of these resolutions, Mr. Swift stated that the circulating medium of the State was not less than $65,000,000, and that, to be any real benefit to the government, a much larger amount must go into circulation, driving the gold entirely out. It was impossible to accomplish that; and, consequently, the law operated injuriously on our commerce, as prices did not rise here as in the Eastern States. The only benefit was derived by a few unscrupulous persons. The current rate of interest in San Francisco had gone up from one to two per cent. per month, and very few money loans were effected in consequence of the feeling of insecurity and the general belief that no contract could be drawn up to prevent the United States notes being tendered in payment in lieu of coin.* It was, moreover, urged, for the exemption of California from the operation of the Legal Tender Act, that California had always used gold currency, and all her citizens had based their contracts upon such currency; that the legal coercion of the federal government to compel the citizens to receive paper money on their contracts does materially vitiate such contracts and destroy their validity; and that such coercion does not help the federal government.†

These resolutions came up for a final discussion and vote on February 19, 1863, and met with vigorous opposition. Mr. Duncombe declared that by them the legislature was asking Congress to allow California to secede from the Union, so far as it related to the laws concerning currency and banking. It would be a suicidal act for California to do what was asked by these resolutions. Gold was the fancy stock in the Eastern States. It was not true that legal tender notes were below par, as compared with labor and commodities. The fact was that gold and silver were above par. The resolutions set forth

**Daily Union*, February 13, 1863. †*Evening Bulletin*, February 16, 1863.

that Californians were suffering under peculiar difficulties, when, in fact, California gold — the product of her mines — was selling at a premium. He wished to see this national currency made as general as possible. He did not wish that the great and glorious State of California should be exempt from a general law designed for the benefit and salvation of the whole nation. He further suggested that the political influence of the resolutions was enough to condemn them, and their financial effect would be to retard the growth and prosperity of the State. The passage of the resolutions would look like a desire on the part of California to shirk her share of the financial burden of the war. If California asked for this exemption, said another opponent, why should not Illinois and other States ask it? The government was pledged to its financial policy, and must now stand or fall by it. The question, then, was whether they should stand by the government or not. He would be about as willing to have the legislature pass a resolution of secession as these.

To this Mr. Swift replied that the action called for by these resolutions, he believed, would be absolutely beneficial to the general government. The extension of the law to this coast had produced no benefit to the general government, and its repeal, so far as California was concerned, would do no harm. The fact that notes could be tendered in the payment of debts between man and man was working great injury to the business community, and would result in the entire destruction of the credit system. Loans could not be effected except in cases where men relied upon the personal honor and integrity of the borrower. In this debate Mr. Sanderson affirmed the constitutionality of the proposed exemption, and declared that Congress obtained its right to make paper a legal tender, not from the clause authorizing it to coin money, but from its right to self-protection,— its right to make war and do anything to save the country in time of war. The power

which determined the necessity determined the extent of the necessity. It could say that the necessity existed in the Atlantic, and not in the Pacific, States. It could consequently say, if it chose and believed it wise, that California should be exempt from the operation of this law. Other advocates of the resolutions laid stress on the fact that, in arguing for them, they were in no sense manifesting disloyalty to the Union. The measure was, however, postponed indefinitely in the Assembly by a vote of 49 to 11.*

The plan to except California from the operation of the legal tender law having failed, an effort was made to obtain relief for the officers and employees of the federal government living in California. It was proposed to have their wages and salaries paid in gold; and, as a step towards this end, the following resolutions were introduced into the Senate: —

Whereas, since the admission of California into the Federal Union its currency has been metallic, and has so continued to the present date; and whereas every officer, soldier, and seaman of the Army and Navy of the United States, and every citizen employee in the service of the government of the United States on duty on the Pacific coast, and at all points west of the Rocky Mountains, have their salaries and pay prescribed by law; and whereas recent instructions have been received from the Treasury Department, directed to the Subtreasurer at San Francisco, hereafter to pay on checks of disbursing officers naught but legal tender notes,— now, therefore, in view of the depreciation of said paper currency on said coast and the utter impossibility of passing the same save at their marketable value, gold and silver being the stated medium, and the cost of living being double that in the Atlantic States where these notes pass at par, be it

Resolved, by the Senate, the Assembly concurring, That our Senators in Congress be instructed, and our Representatives requested, to impress upon the Executive the absolute necessity which exists of having officers and soldiers of the United States Army, officers and seamen of the United States Navy, and all other citizen employees in the service of the government of the United States, serving west of

* *Daily Union*, February 20, 1863.

the Rocky Mountains and on the Pacific coast, paid their salaries and pay in gold and silver currency of the United States.

Resolved, That this preamble and resolution be without delay telegraphed by the Governor of this State to our delegation in Congress, in order that immediate action may be had upon the same.

These resolutions aroused the advocates of inflated currency. Speaking to the motion to refer them, Mr. Shannon, a Senator, said: "I believe we shall have to do one of two things, either accept the national currency as money, and make it the basis of California, or secede from the Union. We cannot continue to live under the present state of affairs, repudiating the government's currency, its life blood, and pretending at the same time to be loyal." After a brief debate the resolutions were referred to the Finance Committee,* and disappeared.

But these measures, even if they had been adopted by the legislature, would not have accomplished what was needed to keep the business of the State on a specie basis. It became clear in the course of time that legislation must be had to enable parties to enforce in the courts the collection of the kind of money which had been specified in the contract. This plan, which at first took root slowly, at last attracted the attention of all those who wished to retain gold as the standard medium of exchange. The *Daily Herald* was conspicuous as its early advocate. A writer in this journal, February 16, 1863, found very little difficulty arising from the use of legal tender notes; for they had a market value, and most people were ready to receive them at that value. But certain inconveniences arose later; and on March 7, 1863, the same journal pointed to the remedy that was ultimately made effective: —

As there are two kinds of money provided by Congress [it was said], let us confess the fact, and let the legislature recognize the distinction, too. Let contracts in gold and silver be enforced, as they are

* *Daily Union*, February 20, 1863.

made in good faith. Let some proper statute give validity to agreements expressly made upon a specie basis, as well as to any other contracts which neither are wrong in themselves nor contravene the general policy. . . . Let gold and silver continue in California, as heretofore, the only standard in ordinary transactions, and let paper be used at its market price.*

This journal continued to advocate such legislation as would make it possible to enforce specific contracts. "It is past all contention," it was said in the issue of March 16, "that contracts fairly made in view of all the circumstances ought to be enforced. If, then, contracts are made specifically to be performed by the payment of gold, it seems to us to be a duty on the part of the legislature to provide the remedy for their enforcement. Common honesty cannot refuse this. Fair dealing and the general interest demand it." The views here set forth were not, however, antagonistic to the use of legal tender notes, but only insisted that it was for the interest of California "to preserve a uniform standard of price in trade, while at the same time giving real encouragement to the employment of the paper money of the government at its relative current value."

The legislation required to accomplish this purpose, and to enable business to proceed on a specie basis, was embodied in an act amending the statute of 1851, which regulated proceedings in civil cases. The essential points of the change are set forth in the following sections from the amended law: —

In an action on a contract or obligation in writing, for the direct payment of money, made payable in a specified kind of money or currency, judgment for the plaintiff, whether the same be by default or after verdict, may follow the contract or obligation, and be made payable in the kind of money or currency specified therein; and, in an action against any person for the recovery of money received by such person in a fiduciary capacity or to the use of another, judgment for

* *Daily Herald*, March 9, 1863.

the plaintiff, whether the same be by default or after verdict, may be made payable in the same kind of money or currency so received by such person.

The writ of execution shall be issued in the name of the people, sealed with the seal of the court, and subscribed by the clerk, and shall be directed to the sheriff, and shall intelligibly refer to the judgment, stating the court, the county where the judgment roll is filed, and, if it be for money, the amount thereof and the amount actually due thereon, and, if made payable in a specified kind of money or currency, as provided in section two hundred of this act, the execution shall also state the kind of money or currency in which the judgment is payable.

If the writ be issued on a judgment made payable in a specified kind of money or currency, as provided in section two hundred of this act, it shall also require the sheriff to satisfy the same in the kind of money or currency in which said judgment is made payable, and the sheriff shall refuse payment in any other kind of money or currency; and, in case of levy and sale of the property of the judgment debtor, he shall refuse payment from any purchaser at such sale in any other kind of money or currency than that specified in the execution. The sheriff collecting money or currency in the manner required by this act shall pay to the plaintiff or party entitled to receive the same the same kind of money or currency received by him; and, in case of neglect or refusal to do so, he shall be liable on his official bond to the judgment creditor in three times the amount of money so collected.*

The bill containing the foregoing provisions passed the Assembly March 17, 1863, by a vote of 42 to 18. The vote on its passage in the Senate was 22 to 11. Whatever opposition it encountered appears to have arisen from doubt as to its constitutionality and practical effects. The discussion of it which was had in the legislature presented it not as a radical measure interfering with any established rights, but rather as a stimulus to men to stand squarely up to their obligations. It recognized both the lawful metallic currency and the legal tender notes as money, but it allowed the parties to a contract to have a definite knowledge beforehand of the kind of money with

* *Statutes of California*, 14th Session, Chap. 421.

which the obligations of the contract would be met. In the final discussion in the Assembly Mr. Sanderson called attention to the fact that the bill only provided that contracts specifying a particular kind of currency should be made payable in that currency, bringing such contracts within the doctrine of equity, so that courts might enforce them. Not a word was said in the bill about gold or silver or paper currency; but a creditor might stipulate to have the payment made in English sovereigns or Spanish doubloons, just as the parties might agree, and the contract would be enforced. Under the law, as it stood before the passage of this act, a man owing $100 could pay it with $50, which was inequitable, contrary to justice, and ought to be contrary to law. There was nothing unconstitutional or wrong in enabling the courts to enforce the carrying out of a contract according to its spirit and letter. The government had presented to the commercial world two mediums of exchange, and parties were at liberty to use either; but, when once they had made their selection, the courts should have power to hold them to it. To allow a person after borrowing money in one currency and agreeing to pay in the same to violate that agreement and pay in another currency worth only half as much was an outrage upon the principles of justice and equity. This law did not discriminate between the two currencies; but it enabled parties to make contracts understandingly and upon equal terms, whichever currency was used. The passage of this bill would not injure the credit of greenbacks, and its rejection could not enhance their value or increase their circulation. This act, on the contrary, would give the United States Treasury notes legal standing and recognition, thus giving stability to paper currency. In the same discussion Mr. Hartson said that the great advantage of the bill would be to harmonize the conflict between the two standards of value. In this State, unused to paper currency, remote from the States

where that currency is used, and producing gold as its chief product, it was impossible to change from the old standard without immense losses and inconvenience. The act would be, in fact, an acknowledgment of the validity of the Legal Tender Act of Congress; and it would injure nobody, unless it was an injury to a man to compel him to abide by his agreement. It would strengthen the State, settle the uncertainties of commerce, unlock the treasuries of credit, and inspire new confidence in business men.*

In the opposition which had been raised against this bill in the course of the discussion in the legislature it was assumed that to pass such a law would be "inconsistent with patriotism," and, moreover, that it would inflict an injury on the State by interfering with the importation of capital and by preventing the growth of the population through immigration. But the opposition which had arisen on doubts concerning the constitutionality of the law was soon set aside by the courts. In July, 1863, in the case of Carpenter *v.* Atherton, the Specific Contract Act was pronounced constitutional; and it was held that the specific contract to pay in gold, which was the foundation of the judgment in this case, was more than a contract for the payment of money merely, but went to the extent of defining by what specific act the contract should be performed. "By the admitted and settled rules of law such a contract can be performed, according to the agreement of the parties, only by the payment of the kind of money specified." According to this decision, the law in question created no new rights in the abstract, but merely added "to the cases in which it is competent for the courts to enforce the execution of contracts specifically," and provided the means by which this could be done. In this the act was found to be in harmony with the doctrines of equity jurisprudence relat-

* Sacramento *Daily Union*, March 18, 1863.

ing to kindred subjects, and at the same time in no just sense "contravened the laws of Congress making United States notes lawful money and a legal tender in the payment of debts." The court could not "say judicially that a gold or silver dollar is of greater or less value than a United States note of the same denomination," but affirmed that —

> A contract payable in money generally is, undoubtedly, payable in any kind of money made by law legal tender, at the option of the debtor at the time of payment. He contracts simply to pay so much money, and creates a debt pure and simple; and by paying what the law says is money his contract is performed. But, if he agrees to pay in gold coin, it is not an agreement to pay money simply, but to pay or deliver a specific kind of money, and nothing else; and the payment in any other is not a fulfilment of the contract according to its terms or the intention of the parties.*

Not less important than the foregoing doctrine was the decision that the Specific Contract Act "applied to contracts made before as well as after its passage." In the case of Galland et al. *v.* Lewis et al. action was brought to enforce the payment of a note which had been executed September 1, 1862, and made payable in United States gold coin on the 15th of October of the same year, thus prior to the passage of the Specific Contract Act. It was held that, "where laws confessedly retrospective have been declared void, it has been upon the ground that such laws were in conflict with some vested right, secured either by some constitutional guarantee or protected by the principles of universal justice." But this act "takes a contract as it finds it, and simply enforces a performance of it according to its terms," and "is not liable to objection, because it may have a retroactive operation by way of relation to past events." † In Lane *v.* Gluckauf it was further held that a contract in the form of a note "to pay a specific sum in gold coin, or, upon failure thereof, to pay

*25 Cal. 564. †26 Cal. 47; 27 Cal. 80.

such further sum as might be equal to the difference in value between gold coin and legal tender notes, belongs to the class of contracts provided for in the so-called Specific Contract Act, and might be enforced according to its meaning." * Also, in a later decision, in the case of Beaudry *v.* Valdez, it was established that a tax due for an assessment for improving a street might be assessed upon a gold basis and collected in gold coin.

The Specific Contract Act was approved April 27, 1863, and was received with manifest satisfaction by the commercial community. The people of San Francisco had special reason to be pleased. The satisfaction was not, however, universal; for in the session of the legislature of 1863–64 a bill was introduced into the Senate to repeal this law. In his report as president of the San Francisco Chamber of Commerce, dated May 10, 1864, Mr. James de Fremery refers to the fact that "the advocates of repeal made every effort to attain their object." Their project was kept on foot for some time; and, in view of the proposed repeal of the Specific Contract Law, the Chamber of Commerce of San Francisco issued an address to the people of California. It was unanimously adopted, and contained a vigorous presentation of the argument in favor of maintaining the law. Among other things, it was said that, at the time of the adoption of the Specific Contract Law,

> the interests of the entire State were jeopardized by the threatened withdrawal from circulation of large amounts of capital, through apprehension that certain fiscal measures of the government would be availed of for dishonest purposes. The law simply enforces the faithful performance of contracts. It enjoins good faith, a principle which lies at the very foundation of public prosperity, and without which there can be no mutual confidence, no progress, no credit, and no trade upon the enlarged and liberal theories of modern commerce. The passage of the law not only averted the calamity, but, upon the faith of it, very considerable accessions of capital were brought to this

* 28 Cal. 288.

country. Over $1,500,000 from foreign sources have been located here permanently, within little more than a twelvemonth, for banking purposes alone; while over $3,000,000 in gold from the Atlantic cities have been placed in our securities and other property, and a still greater amount but awaits our call and favorable opportunities for investment. That the abrogation of this, though without prejudice to existing contracts, will be followed by disastrous results, is confidently believed; for the reflection very naturally arises that the morals of a community must be at a very low ebb where the restraints of such a law are found irksome to the majority, and the desire for its repeal will certainly be attributed to a wish for license to do what it forbids. That this will be the public verdict, in the event of repeal, can hardly be doubted; and capital, with its usual timidity, will in that case seek other channels.

The address was signed by all of the leading firms and business men of San Francisco, and was indorsed by the various laborers' associations. The president of the Trades-union remarked, in giving his indorsement, "that the subject had been latterly very freely discussed in most of the trade organizations throughout the city, and that a like unanimity of sentiment prevailed in them all." The bill providing for a repeal of the Specific Contract Law was defeated in the Senate by a vote of 24 to 16. The impossibility of repeal having been practically determined by this vote, the business of the Commonwealth may be said to have acquired a settled monetary basis.

BERNARD MOSES.